

Safeguarding Creativity Online: Challenges and Solutions for Intellectual Property

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Abstract

The digital age has seen a surge in online content creation and sharing. This has made it increasingly difficult to safeguard intellectual property (IP) from online infringement. The internet's borderless nature, unlike physical borders that can impede the import of counterfeit goods, facilitates easy access to potentially infringing content. This raises the question: can IP rights be effectively protected in cyberspace? This research paper delves into the challenges of IP protection in the digital era, particularly those arising from technological advancements and widespread internet use. It aims to determine whether India's current legal framework for IP rights in cyberspace requires stricter regulations or updates. The ever-growing internet user base and its integration into daily life necessitate a thorough examination of the legal implications surrounding IP protection online. This research can inform policy decisions regarding potential updates to existing IP laws in India.

Introduction

While the internet streamlines daily activities, it's also a popular platform for entertainment, with streaming services like Netflix, Amazon Prime, and YouTube offering vast libraries of content. These platforms strive for authorized distribution, but content piracy remains a persistent issue. Blockbusters like KGF: Chapter 2, RRR, John Abraham's Attack, and countless others appear on piracy websites, often before legitimate releases. Even Hollywood films like Frozen 2 have fallen victim, surfacing on platforms like Tamil Rockers before hitting Indian theatres. The problem extends beyond movies. Snapdeal's trademark infringement case exemplifies the ease with which online deception occurs. Building a brand in the physical world takes significant effort, but online, creating a lookalike website with similar colours and features to defraud customers is a much simpler feat. The virtual world amplifies the ease of infringement compared to the physical one. This research paper delves into the challenges that threaten intellectual property rights (IPR) in cyberspace, focusing on the vulnerabilities faced by entertainment content and established brands.

Copyright Protection in Cyberspace

The concept of copyright, established in the Copyright Act of 1957, grants creators exclusive rights to control the use and distribution of their work. However, the digital revolution has thrown a wrench into this system. The ease with which digital creations can be infinitely reproduced and shared online presents a significant challenge for copyright enforcement. Platforms like YouTube grapple with the responsibility of policing user-generated content, creating fertile ground for unauthorized distribution. Furthermore, practices like caching, deep linking, and peer-to-peer file sharing exacerbate the problem. These methods facilitate the easy dissemination of copyrighted material, often leading to financial losses for creators, especially in cases like movie leaks before official releases.

Examples of Copyright Infringement Online:

- **Rogue Websites:** Cases like Disney successfully taking legal action against websites illegally streaming their movies showcase the ongoing battle against online piracy.
- **DMCA Takedown Notices:** Mechanisms like DMCA takedown notices empower content creators to request platforms remove infringing material.

Strategies for Protecting Copyrights Online:

- **Digital Rights Management (DRM):** Technological solutions like DRM systems can help restrict unauthorized copying and distribution of digital works.

- **Electronic Copyright Management System (ECMS):** This tool offers authors and artists a means to actively enforce copyright protection.

Following are some of the challenges faced in enforcing copyright protection in cyberspace:

1. Intermediary Liability

As per Section 79 of the Information Technology Act, 2000 Internet Service providers that provide user-generated content cannot be held accountable for any illegal act of the user on their platform if they have exercised due diligence. They are protected if they have followed all the procedures laid out in Rule 3 of The Information Technology (Intermediaries Guidelines) Rules, 2011. If you post original videos online and they are reposted by someone else on their own YouTube channel without permission and without giving due credit to the creator of original works then in that case u/s 51 of the Copyright Act, 1957 it's a case of copyright infringement because videos were posted/re-posted without permission of the original creator. In case an audio version of the copyrighted book is published illegally on YouTube the license for publishing the Audiobook on YouTube was not obtained from the author, u/s 51 of the Copyright Act, 1957 it's a case of copyright infringement.

Since IP Rights are violated, original creator is entitled to ask for an injunction, damages, and compensation from that person who has used his works illegally and YouTube because it was streaming such videos. If YouTube can prove that on the date of the infringement, it was not aware and there were no reasonable grounds for believing that copyright subsisted in the work because it was uploaded after editing which did not get caught in YouTube's infringement checking software then you are not entitled to any remedy other than an injunction but you can claim a decree for whole or part of the profits made by YouTube.

In both cases you would have noticed that YouTube needs to prove that it has exercised due diligence or else it shall be held liable for copyright infringement and would have to pay damages to the owner of the copyrighted work. YouTube has to take precautions so that no such violations occur in the future. It is mandatory to send a DMCA Takedown notice to the person who has uploaded the author's original works illegally without their permission and uploaded it online under his name.

2. Easy Dissemination

The internet's lightning-fast data transfer capabilities create a double-edged sword for copyrighted works. While information sharing is easier than ever, it also facilitates the unauthorized spread of creative content. This is evident in movie leaks that surface online before official releases, causing significant financial losses for production companies. To combat this issue, copyright owners can leverage tools like the Electronic Copyright Management System (ECMS). This system helps them control the dissemination and copying of their works in the digital age.

The Disney vs. rogue websites case exemplifies this problem. These websites streamed Disney movies illegally, infringing on their copyright. The Delhi High Court rightfully ruled to restrain such activities, preventing these websites from hosting, distributing, or making available pirated Disney content.

Remedies

Video streaming sites like YouTube face a dilemma. They can't realistically screen everything uploaded, but they need to prevent copyright infringement. To tackle this, Digital Rights Management (DRM) was created. DRM acts like a lock on creative works, limiting copying and piracy. Creators should be familiar with DRM systems like the Electronic Copyright Management System (ECMS). These tools help platforms like YouTube show they're actively protecting copyrights. By using these detection methods, platforms can potentially avoid being held liable for copyright infringement on their sites.

This approach is similar to a court case (UTV Software Communication Ltd2) where authorities were involved in taking down harmful websites. In copyright cases, similar measures could be adopted, such as sending takedown notices to hosting sites, freezing payments to infringers, seizing domain names, removing infringing content from search results, or even stopping infringing materials at customs.

Trademark Protection in Cyberspace

Trademarks are valuable because they represent a consistent level of quality. This value is at risk if fakes or poor-quality imitations confuse consumers. Unlike physical goods, trademarks are typically enforced within a specific country. This can create confusion in online infringement cases, where websites or virtual spaces can be accessed globally. Cyberspace presents unique challenges for trademark enforcement. Common tactics used by infringers include cybersquatting (registering domain names similar to a brand), typosquatting (tricking users into visiting fake sites by misspelling the brand name), and using relevant keywords (like a brand name) in meta tags to manipulate search rankings.

The United States was a pioneer in addressing online trademark infringement with laws like the Anticybersquatting Consumer Protection Act. These laws help brands fight back against cybersquatters and other online infringers.

The paragraph also includes two interesting court cases:

- **Richard Minsky v. Linden Research Inc.:** This case involved a virtual art gallery in the online game Second Life. The court granted a temporary order to stop trademark infringement, demonstrating that real-world laws can apply in virtual spaces.
- **Hermès International vs. Mason Rothschild:** This case dealt with "MetaBirkins," NFTs resembling Hermès' Birkin bags. The court ruled that these NFTs could confuse consumers and awarded damages to Hermès. This case is significant because it explores how intellectual property law applies to the digital world, including NFTs.

Following are some of the challenges faced to enforce trademark protection in cyberspace:

1. Cyber Twin

Sometimes, conflicts arise over domain names when both the owner and the challenger have a legitimate reason to hold it. These situations are known as "Cyber Twin" cases. For the challenger to win an injunction (a court order to stop using the domain name), they need to prove the name is confusing to customers. This means it could lead people to believe they're interacting with the wrong company. Here's an example: In the case of Data Concepts, Inc. v Digital Consulting Inc., both parties had trademarks for "DCI" and a valid claim to the domain name "dci.com." However, the court dismissed the case because Data Concepts couldn't prove customers would be confused by the domain. Neither party knew of the other's existence, so there wasn't any fault involved. This case highlights the importance of thorough research before choosing a domain name. Just like we do trademark searches before registering a trademark, it's crucial to check for potential conflicts with existing domain names to avoid future legal issues.

2. Cyber Parasite

One tactic cybersquatters use is typosquatting. This involves creating domain names with minor misspellings of famous brands, like "Nik.e" instead of "Nike." These misleading names aim to trick users into visiting fake websites, hoping they won't notice the typo. This practice weakens the original brand's trademark (dilution) and can cause financial losses. The Aaj-Tak case is a good example. Here, rogue websites like "www.aajtaknewsdaily.com [invalid URL removed]" mimicked the legitimate news outlet "Aaj-Tak." The Delhi High Court ordered these websites to be taken down and social media platforms to remove any infringing content. This case importantly established protection for variations of a brand name, not just the exact match.

Similarly, the Snapdeal case involved a scheme where fake websites used similar names and colours to trick customers into fake lottery offers, damaging Snapdeal's reputation. The court issued a "dynamic injunction," allowing Snapdeal to take down future infringing websites that might appear. These cases

show how courts are taking action against typosquatting and other online trademark infringement tactics.

Remedies

Reverse Domain Name Hijacking

A rightful trademark owner with the intention to secure a domain name can make cybersquatting claims against a domain name's "cybersquatter" owner. It can be used as a legal remedy to counter the practice of domain squatting.

Dynamic Injunction

In Cybersquatting and Cyber Parasite-like cases of trademark infringement courts should have the practice to provide dynamic injunction. It provides instant relief against such malpractices because it extends to other mirroring websites that are similar to the Trademark owner's domain name but have come up after a main injunction was granted.

What does not amount to Trademark Infringement in Cyberspace?

Not all uses of trademarks online are considered infringement. For instance, parody can be a fair use defence. In the case of Tata Sons Limited vs Greenpeace International, Greenpeace created a video game criticizing Tata's environmental impact. The game featured a Pac-Man-like character battling TATA logos. The court ruled that this wasn't trademark infringement because it was a clear parody meant to criticize Tata, not to deceive consumers about the source of the game. This case shows that using trademarks for parody or criticism can be permissible.

Patent Protection in Cyberspace

A recent incident involving a 3D-printed firearm used for a school threat in the US highlights a growing concern. Freely available online blueprints allowed the creation of this weapon. This case raises questions about online access to intellectual property. When patents are granted, their details are published online, potentially making them vulnerable to misuse. Easy access to the internet and 3D printing technology creates a risk for both design and utility patents.

One potential solution involves using blockchain technology. By storing patent data on a blockchain, authorities could potentially trace who accessed the information in cases of infringement. This could be a valuable tool for identifying and prosecuting those who misuse patented designs.

Conclusion

Intellectual property (IP) laws, created before the internet boom, struggle to keep pace with online infringement. New laws like the DMCA (Digital Millennium Copyright Act) and ACPA (Anti-Cybersquatting Consumer Protection Act) are crucial for protecting IP rights in the digital age. Subscription services like YouTube, Netflix, and Amazon Prime invest heavily in exclusive content. Piracy through torrent websites significantly impacts their business model. While some countries block these sites, users can still access them through VPNs and proxies. Social media platforms also pose challenges. Content meant for broadcast can leak online before release, often due to loopholes in existing laws. Dynamic injunctions, court orders allowing takedown of infringing content across platforms, could be a powerful tool against online piracy.

Trademark protection is equally important. Unregistered trademarks are vulnerable to dilution (losing distinctiveness) online. However, pursuing legal action against anonymous infringers using proxy servers can be difficult. This highlights the need for a comprehensive approach to online IP protection. Stronger laws, improved enforcement mechanisms, and international cooperation are all necessary to safeguard creativity in the digital world.

Suggestions And Findings

The rise of social media has created a double-edged sword for creators. While some, like Bhuban Badyakar of the "Kacha Badam" song, find unexpected fame, many traditional artists remain vulnerable. These talented

individuals, often performing in public spaces, can have their work recorded and used by others without permission. Educating these artists about their intellectual property rights (IPR) is crucial. They need to understand how to protect their work and how to claim fair compensation.

For online platforms like YouTube and Instagram, copyright infringement is a constant battle. The Digital Millennium Copyright Act (DMCA) empowers artists to file takedown notices against websites hosting pirated content. Repeated DMCA notices can lead to a website's removal from search engines and its ad revenue drying up, making piracy less profitable. Unfortunately, copyright compliance isn't always followed, particularly on platforms like Instagram Reels. While platforms have detection software, the burden often falls on rights holders to enforce their rights. Digital pirates are known for adapting. Website blocking, a common tactic, can be circumvented by creating new domains. A multi-pronged approach is needed, including website blocking, IP address blocking, and various URL blocking techniques.

Finally, trademark registration is essential for businesses operating online. Cases like *Richard Minsky v. Linden Research Inc.* and *Hermès International vs. Mason Rothschild* demonstrate that trademark infringement can occur in virtual environments like Second Life and the Metaverse. The United States is a leader in developing laws to protect trademarks in the digital world.

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